

**United States Court of Appeals  
For the Ninth Circuit**

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CANADIAN PACIFIC RAILWAY Co., a corporation,  
*Appellant,*

vs.

UNITED STATES OF AMERICA, *Appellee.*

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF WASHINGTON  
NORTHERN DIVISION

HONORABLE JOHN C. BOWEN  
*United States District Judge*

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**APPELLANT'S OPENING BRIEF**

---

BOGLE, BOGLE & GATES  
THOMAS L. MORROW  
*Proctors for Appellant.*

603 Central Building,  
Seattle 4, Washington.



FILED

MAY 27 1959

PAUL F. WOODLEY, CLERK



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## For the Ninth Circuit

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vs.		
UNITED STATES OF AMERICA,	<i>Appellee.</i>	

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF WASHINGTON  
NORTHERN DIVISION

HONORABLE JOHN C. BOWEN  
*United States District Judge*

### APPELLANT'S OPENING BRIEF

#### STATEMENT OF JURISDICTION

This action was instituted by a libel in personam in Admiralty in the District Court by the United States of America, libelant, against the Canadian Pacific Railway Co., a corporation, as owner and operator of the SS PRINCESS LOUISE, respondent (R. 3). The libel alleged a cause of collision, civil and maritime, arising out of damages to the appellee's Alaska Communications System submarine cable lying beneath the surface of the waters of Puget Sound, alleging fault on the part of the SS PRINCESS LOUISE in causing or permitting the vessel's anchor to collide with and break the said cable while attempting to dock at Pier 64, Seattle, Washington, on March 21, 1955 (R. 4). The answer of appellant alleged that if the anchor of the SS PRINCESS LOUISE

struck and damaged the said Alaska Communications System submarine cable while attempting to dock, such damage was caused without fault and neglect on the part of the respondent, the SS PRINCESS LOUISE, her officers and crew (R. 7). The libel alleged and the answer admitted the admiralty and maritime jurisdiction of the United States and of the District Court (R. 5, 7).

Findings of Fact and Conclusions of Law and a final decision were entered in favor of appellee and against appellant by the District Court (R. 13, 19).

The United States District Court had jurisdiction by virtue of 28 U.S.C.A. §133 and 46 U.S.C.A. §740. See also *All America Cables & Radio v. The Dieppe*, 93 F. Supp. 923 (S.D. N.Y. 1950).

Following entry of the final decision, an appeal was taken by respondent from the decree (R. 20), which by virtue of 28 U.S.C.A. §1291 gives this Court of Appeals jurisdiction to review the decree.

### STATEMENT OF CASE

This appeal presents questions (1) whether the trial court clearly erred in finding and concluding that the appellant was liable for damage to a submarine cable owned by appellee, (2) whether the court erred in excluding from evidence respondent's Exhibit A-11, being a U.S.C. & G.S. Chart No. 6446 issued by appellee subsequent to the loss, and (3) whether the trial court erred in admitting and considering hearsay evidence on the question of damages and in finding and concluding that appellee had sustained its burden of proving damages.



The principal question on the issue of liability hinges on the issue whether the appellee's submarine cable on March 21, 1955, was struck by the anchor of the PRINCESS LOUISE within the boundary of the *marked* cable area *as marked* on mariners' charts in general circulation on that date. The trial court found against appellant on that issue (R. 15).

There is no indication that the trial court took into consideration the documentary and oral evidence conclusively showing that appellee's A.C.S. submarine cable was replaced and relocated following a 1953 casualty to a position outside and beyond the marked and posted cable area appearing on mariners' charts. Where the cable was located on March 21, 1955, is determined by its relocation in 1953. Whether the PRINCESS LOUISE dropped and dragged her anchor through a *marked or known cable area* so as to come in contact with and break the A.C.S. submarine cable lying on the bottom is dependent upon the whereabouts of the cable and whether it was in a *marked* cable area.

The appellee owns and maintains a submarine cable in Puget Sound between Pier 57, Seattle, and Fort Lawton, Washington, on the bottom and beneath the surface of Puget Sound, known as the Alaska Communication System submarine cable (Findings I, R. 14). The cable was located and installed in accordance with a War Department Permit dated 16th June, 1949 (Libellant's Ex. 5, Findings II, R. 4). The cable as authorized extended along the south side of Pier 57 and thence on a bearing of  $282^{\circ} 49'$  (in the westerly direction from Pier 57). The location appears on a diagram attached

to the War Department Permit (Ex. 5, sheet 3). The submarine cable *as authorized* was partly within a marked cable area shown on the mariners' charts on March 21, 1955 (Findings III). Even so the A.C.S. submarine cable *as authorized extended westerly* from Pier 57 out *beyond the marked cable area* as illustrated by Respondent's Exhibit A-1, the same being marked with a bearing  $282^{\circ} 49'$  as marked by the Master (R. 284, 285).

The submarine cable *as authorized* was not in the authorized position on March 21, 1955. It was changed in February, 1953, following extensive damage and repairs and was relocated or replaced as shown on the last page of the 1953 Deck Cable Report on respondent's Exhibit A-5. The relocated position of the submarine cable is also shown in red ink marks on the mariners' chart as marked by the Master of the cable ship. The cable extends outside of the marked cable area on the chart (Respondent's Exhibit A-1, R. 287). The red markings of the submarine cable on respondent's Exhibit A-1 as plotted by the Master following the February, 1953, change, shows "a northerly turn or bend of the cable across the face of Pier 64" (R. 287). Pier 64 is, of course, the C.P.R. dock customarily used by Canadian Pacific Company's vessels. Following the March, 1955, casualty, strangely, the A.C.S. submarine cable was *replaced or relocated* to its approximate *authorized position*. See Diagram, last page of 1955 Deck Cable Report, being respondent's Exhibit A-4. The cable area now appears properly marked on mariners' charts. The *marked* cable area was subsequent to the 1955 damage enlarged to include the area of the A.C.S.

submarine cable as it turns and goes northerly, *showing the jog to the north*. This is illustrated by the cable area shown on Respondent's Exhibit A-11 issued in 1958, being U.S. Coast & Geodetic Survey Chart No. 6446 offered but refused in evidence (R. 379, 386).

There was on March 21, 1955, a sign posted on the seawall between Pier 56 and Pier 57, Seattle, Washington, warning of the cable area and against anchoring (R. 14, 104, 105) and known to the Master of the PRINCESS LOUISE (R. 351, 352). No sign appears to have been posted warning of a submarine cable off, say, Pier 58 or Pier 64 past which the cable extends in its reach to the north under water on the bottom.

The court found that the PRINCESS LOUISE, a cargo and passenger vessel of 320 feet in length and owned by appellant, was on March 21, 1955, between the hour of 3:00 p.m. and 4:00 p.m. engaged in docking maneuvers in Seattle harbor (Findings IV, R. 15); that those in charge of her did negligently drop and use her anchor in such close proximity to the cable area as to avoid contact with A.C.S. submarine cable on the bottom (Findings VI, R. 15); that the anchor of the PRINCESS LOUISE was dropped and dragged while the ship was maneuvering in a southeasterly 35-mile wind between 3:00 p.m. and 4:00 p.m. on March 21, 1955; that the anchor "did come into contact with and damage said submarine cable *within the charted boundaries* of said cable area and break said submarine cable (Findings VI, VII, R. 15) resulting in direct damage of \$6,954.23 for repairs to the cable (Findings XII, R. 16).

The court further found negligence on the part of

those in charge of the PRINCESS LOUISE in failing to accurately observe and maintain her position clear of the charted, posted and known cable area while dragging her anchor to assist in controlling her maneuvers (Findings VIII, R. 16), and such failure was the proximate cause of the damage to the cable by the PRINCESS LOUISE (Findings IX, R. 16); that the A.C.S. submarine cable was in use prior to 3:00 p.m. on March 21, 1955, and found inoperative at 4:00 p.m. on said date, and appellee was not at fault and did not contribute to damage (Findings XIV, R. 17). What are the facts as to the location of the cable and whether the cable was within the boundaries of a marked area?

The position of the break of the A.C.S. submarine cable in March, 1955, was established by the cable ship LENOIR at latitude  $47^{\circ} 36' 29''$  N., longitude  $12^{\circ} 21' 8''$  W. (R. 238, 288). Thirty-four hundred and some odd feet from shore the broken end of the A.C.S. submarine cable was picked up (R. 238, 298). The position *was north of the marked cable area noted on Respondent's Exhibit A1 and in the vicinity of the A.C.S. submarine cable as replaced and relocated in 1953*. See the red ink line and tiny circles extending beyond the marked cable area on respondent's Exhibit A-1 (R. 287). The position of the break was plotted by the Master on Respondent's Exhibit A-1 and identified by a "small blue circle designated by a blue spear" and the label "Seattle broken end" (R. 289). The Master of the cable ship said, as we said before, it is "*beyond the western extremities of 'the cable area marked on the chart'*" (Respondent's Exhibit A-1). The position was identified by the Master of the cable ship as being perpendicular

or southwest of Pier 66, the Bell Street Terminal (R. 292, 293). He said it was 420 yards from the western extremity "of the cable area" (R. 293). Actually, the position where the cable broke is 500 yards beyond the cable area (Respondent's Exhibit A-1). The depth of water at the position of the break was 30 fathoms, or 180 feet (R. 306). The position of the cable ship at the time the broken end of the cable was brought aboard was "accurately" established by a competent navigating officer (R. 313). The position as established by the navigating officer of the cable ship *established the position in which the cable was hooked as the closest measurement to that position which could be obtained*. The Master of the cable ship testified:

"Q. Now, in your experience, Captain, in the repair of cable and the laying of cables does the position in which the broken end was logged aboard have any direct and necessary relation to the position in which the cable was hooked or contacted by any dragging object?

A. I would say yes, it's the closest measurement to that position we could obtain." (R. 306, 307)

The position of the break in the A.C.S. submarine cable as illustrated by Respondent's Exhibit A-1, so marked with a blue circle, is a distance of 75 yards south of the position in which the cable was replaced in 1953. The A.C.S. submarine cable could have been moved from its 1953 and March 21, 1955, position, a distance of 75 yards to the south, *by a ship backing* and dragging its anchor on the bottom (R. 302). From a physical examination of the A.C.S. submarine cable after the break, the Master of the cable ship concluded:



“that a ship’s anchor had probably hooked the cable and had dragged it along a distance and then broken the cable.” He testified that the outer jute was torn off the cable for a distance of 500 *feet* from the broken end and that the steel armors were scored badly for a distance of 100 feet from the end (R. 241, 255).

The location of the cable was also established by the place the cable was picked up by the cable ship at the Fort Lawton end. The Fort Lawton end of the submarine cable was picked up in a position Latitude 47° 36’ 35” N., Longitude 122° 21’ 19” W., which position appears on the chart (Respondent’s Exhibit A-1, R.293, 294, 295, 296, 297), being much in the same location as established in 1953 in the Deck Cable Report of the cable ship LENOIR and Pilot House Log (Respondent’s Exhibits A-5, A-6). Compare the 1953 location in a red line and tiny red circles with the black circle and position indicated by the Master of the cable ship “picked up cable extending from Fort Lawton” plotted on Respondent’s Exhibit A-1 (R. 296).

It is appellant’s contention that the documentary evidence outlined above clearly makes erroneous the court’s finding on the issue of whether the PRINCESS LOUISE struck and dragged the cable *within the boundaries* of a *marked* and known cable area. It also refutes the story of a Col. Rogers, reviewed as follows:

Col. George F. Rogers was Executive Officer, Alaska Communication System, at Seattle, in March, 1955. From the Federal Office Building on First and Marion he observed that the PRINCESS LOUISE was having difficulties in maneuvering into a berth at the C.P.R. dock.

This was on March 21, 1955, at about 3:00 o'clock p.m. (R. 36, 37, 39). He testified the PRINCESS LOUISE "backed down towards our cable area and she had an anchor dragging all that time. That's the end of what I observed" (R. 39). He observed her two or three ship lengths off Pier 57 (650 feet or 960 feet) which he estimated at 600 feet (R. 41). Her anchor was stretched toward the shore as the PRINCESS LOUISE backed (R. 43) and she backed into the cable area and had her anchor dragging (R. 49, 50, 52). When he *first observed* the PRINCESS LOUISE she was "down next to her own dock, *then she backed* and swung over our area" (R. 51). When he saw her back down and her anchor dragging, he concluded there was a possibility of trouble with the Seattle-Fort Lawton cable (R. 52). She *backed generally towards West Seattle*, which would be *southwest* (R. 51), "in a westerly direction" (R. 56). It is to be observed from Respondent's Exhibit A-1 and A-11 that the PRINCESS LOUISE backing in a southwesterly direction would not move into the marked cable area which area is to the southeast of the C.P.R. dock, Pier 64. The position of the break is *southwest* not southeast of the C.P.R. dock, Pier 64 (Respondent's Exhibit A-1). Col. Rogers stated "I don't pay any attention to charts." He didn't know how far out from seawall at the foot of University Street the marked area goes. He did not know the exact location of the Fort Lawton cable (R. 54). He knew "the cable runs down alongside the pier (Pier 57) and swings out towards Fort Lawton (north)" (R. 55). When he referred to the cable area, Col. Rogers was referring to "the area out off the pier (Pier 57) that our cable runs in . . . there's an area off of the pier

that our cable runs through" (R. 55). He placed the PRINCESS LOUISE two or three ship lengths off Pier 57 (R. 57), which if directly off the face of the pier would place the PRINCESS LOUISE southeast of the C.P.R. dock, Pier 64, instead of southwest or towards West Seattle in which direction he testified she backed (R. 51). If the PRINCESS LOUISE backed southwest two or there ship lengths from Pier 64, as testified to by the witness, she could not go over the marked cable area, particularly while making leeway (north) in a southeast gale, which she did (R. 327).

On the issue of negligence in navigation the appellee produced Capt. Albert S. Howell. He was a master mariner and pilot, retired, and not an eye witness. He qualified as an expert on the docking of ships (R. 256). He was of the opinion that it would have been proper to make a landing of the SS PRINCESS LOUISE on the face of the dock, run a headline around the corner of the dock and break around the corner (R. 261, 263). He would "never get upwind on the dock that I was going to dock at" (R. 261), and he would "never get downwindward of the dock where you are going in" (R. 262), which seems contradictory. He would not approach the dock from the upwind side of the dock or from the south or southeast or southwest, but "it would be very difficult to handle the ship that way. I wouldn't be able to do it myself. I never get in that position because I couldn't handle the ship. Coming into the dock you are talking about you're making a port landing" (R. 262, 263). He "had no complaint to make. They were doing the docking, not me" (R. 264). *Nowhere in Captain Howell's testimony did he directly testify that he*



*considered it improper or unseamanlike to dock the ship by dropping an anchor to go in between Piers 64 and 63 as testified to by Captain Campbell of the SS PRINCESS LOUISE.* Captain Campbell testified that it was not feasible to dock the PRINCESS LOUISE by laying her port side along the Canadian Pacific Dock and putting a line on the dock and warping the vessel around the dock in position because of the flaring bow and the buildings close to the corner of the wharf; *that this would be hard to do without inflicting damage to the dock* (R. 323). On the other hand, he had occasions to dock the PRINCESS LOUISE in the face of a strong south-east wind frequently during the winter time and the PRINCESS LOUISE was docked in the usual and customary manner on this occasion "with the aid of the starboard anchor" (R. 322).

On the issue of whether it was the anchor of the PRINCESS LOUISE that caused the cable damage, the appellee sought to show that the cable broke between 3:00 and 4:00 p.m. on March 21, 1955, while the PRINCESS LOUISE was in the vicinity of the C.P.R. Dock, Pier 64, and by showing no other vessel was in the vicinity during that period. Admittedly, no other vessel was in the vicinity between 3:00 p.m. and 4:00 p.m. on March 21, 1955. Evidence on the issue of whether the cable broke during the period in question follows.

Neither the Master nor crew of the PRINCESS LOUISE knew or had any information of her anchor having fouled a submarine cable on the March 21, 1955, trip (R. 324, 364, 366, 373). The Master first heard about such a claim three weeks later (R. 324) and her chief officer

and second mate not until two days after the alleged occurrence (R. 367, 373).

The appellee offered evidence to show "the exact time of the break" (R. 72). This consisted of the A.C.S. Station Log of Kodiak, Alaska, Exhibit 1, identified and explained by Archie Zehe, M/Sgt., U.S. Army, Alaska Communication Station, Kodiak, Alaska, *who was in Kodiak on March 21, 1955*, not at Fort Lawton or Seattle (R. 63, 64, 65).

M/Sgt. Zehe testified that the service from Kodiak to A.C.S., Seattle, was in good operation on March 21, 1955, at 1:00 p.m., 2:00 p.m. and 3:00 p.m. (R. 89). At 3:00 p.m. the service was released to Adak for Adak to work (R. 90, 92).

Speculating that "line trouble" meant the cable between Seattle and Fort Lawton, the record only shows that it was out between 4:05 p.m. and 4:20 p.m. on March 21, 1955 (R. 93). No official word was received by the cable ship *LENOIR* that there was a fault in the Seattle-Fort Lawton cable until March 23, 1955, as appears by her log entry at 10:50 a.m. on the 23rd (Respondent's Exhibit A-3), though her Master received unofficial word "probably the day before" (R. 234).

The mariners' charts in use in March, 1955, marked the boundaries of cable area and also indicated the depth of water to bottom. The appellee produced William M. Martin, supervisory cartographer in charge of the employees in the office, relative to the plotting of hydrographic surveys on charts for the United States Coast and Geodetic Survey office (R. 128, 129). Par-

ticularly, his work related to plotting depths of water lying off coastal waters (R. 130).

In reference to the cable area marked on the chart (Exhibit A-1), Mr. Martin testified the two red lines marked the boundary of the cable area, the northerly line of which extends out from the south side of Pier 58 (the cables are between Piers 56 and 57) (R. 142). The distance from the sea wall to the westerly end of the red line marking the northerly boundary is 580 yards from the sea wall. The distance along the same northerly boundary line from the pierhead of Pier 58 is 420 yards (R. 142). The distance from the most westerly tip of Pier 57 to westerly boundary of the marked cable area is 420 yards (R. 146).

Thus a ship to be within the marked cable area would have to be within 420 yards of Piers 57 and 59 (Langworthy testified that the PRINCESS LOUISE was about 500 yards from either Pier 57 or 59 (R. 127) and Captain Campbell, who was in the best position to know, testified four and one-half cables, which would be 900 yards (R. 331).

Mr. Martin testified that in order to determine the actual depth of water shown on the chart at any particular stage of the tide, you must add the stage of the tide (R. 141). At 3:00 p.m. on March 21, 1955, the tide was 8.7 feet and at 4:00 p.m. the tide was 9.3 feet (R. 141). For example, a 180-foot sounding on the chart at a 9.3-foot stage of the tide would have an actual depth of water of 189.3 feet (R. 141).

The story of the PRINCESS LOUISE and of her proper navigation and movements can best be told by the stories

of her Master and a disinterested witness called by appellee as their stories coincide in every practical aspect.

The SS PRINCESS LOUISE, John A. Campbell, Master, was scheduled to arrive at the Canadian Pacific dock, Seattle, Pier 64, on March 21, 1955, at 2:45 p.m. (R. 324). Having encountered difficulties in docking in the face of a southeast gale, wind force of 40 miles per hour, she docked instead at 3:48 p.m. (R. 323, 324).

The PRINCESS LOUISE approaching Seattle Harbor on a southerly course passed Four Mile Rock at 2:37 p.m., according to her deck log (Respondent's Exhibit A-7). Captain Burt Langworthy, in charge of Harbor Patrol Boat No. 7, observed her coming into the harbor at 3:07 p.m. (R. 112, 113). Langworthy was a harbor man employed by the City of Seattle (R. 98) and observed the PRINCESS LOUISE through field glasses on her scheduled run May 21, 1955 (R. 99, 100). He watched her until about 3:30 p.m. (R. 101), his observations being from 3:07 to 3:30 p.m. for a period of 23 minutes (R. 112). He testified that "she came on her normal course into the harbor and towards the pier (C.P.R. Dock, Pier 64), with the exception of the last portion, and she came farther south than usual" (R. 101) "due to the force of the wind" (R. 101), which he stated was a southerly gale (R. 99). He further stated that during the southernmost portion of her approach "the C.P.R. boat could have been as far as Pier 59" (R. 102), and that she turned left or east into Pier 64 (R. 103).

Captain Campbell testified that upon entering the Seattle harbor in a southeast gale of wind of about 40 miles per hour (R. 323, 324), he approached the C.P.R.

dock by entering in line with and between Pier 63 and Pier 64 (see Respondent's Exhibits A-1 and A-9); that the starboard anchor was let out fifteen fathoms (90 feet) and dropped another fifteen fathoms to thirty fathoms (180 feet) when the PRINCESS LOUISE was about 900 feet from the south corner of Pier 63 (R. 325). This approach was "very similar" to previous occasions on which an attempted landing had been made in a southeast gale (R. 326). The PRINCESS LOUISE normally backs to port which she at first did on this occasion, but in the then existing conditions of wind influence, blowing the bow down, the stern went into the wind (R. 326). The starboard anchor was still out, thirty fathoms in the water (R. 329). After backing out in the clear, the engines were put on ahead on a port helm, and the PRINCESS LOUISE steamed around on a left rudder to get back into position to attempt another landing in a left circling motion (R. 327). On the second approach she was assisted by the tug TITAN, secured to the stern or starboard quarter of the PRINCESS LOUISE with a towline, to counteract the effect of the wind on the stern. The PRINCESS LOUISE made her landing on an approach coming in on a line between the C.P.R. dock and Pier 63 as before (R. 328, 329). The Master had left the starboard anchor out in thirty fathoms of water as a proper precaution *according to the depth of water shown on the chart* and the position of the vessel. It would take bottom at the nearest point where the water was 180 feet deep (R. 330, 331). As the ship approached the wharf on the second approach, the port anchor was let go, right between the wharves at the extreme seaward end (R. 331). The PRINCESS LOUISE



remained at the C.P.R. dock an hour and twenty-one minutes before departure at 5:09 p.m. on March 21, 1955 (R. 331). There is no evidence and no claim that the PRINCESS LOUISE was notified during this period of having fouled the submarine cable in the marked cable area. The closest approach the PRINCESS LOUISE made to the outer end of Piers 57 and 58 on the first approach was  $4\frac{1}{2}$  cables, or 900 yards, a cable being  $\frac{1}{10}$  of a mile, or 200 yards (R. 331, 332, 347, 348, 349).

In making observations of the movements of the PRINCESS LOUISE, Captain Langworthy stated that she was *500 yards* from Pier 57 (R. 105)—this was “shortly after she changed course and headed towards Pier 64 (R. 127). He observed the PRINCESS LOUISE close to Pier 64 at about 3:20 p.m., about fifty feet from Pier 64 and at right angles with the pierhead line which runs north and south (R. 120, 121). He did not see the anchor chain until he saw the PRINCESS LOUISE backing (R. 122, 123). Captain Langworthy observed the PRINCESS LOUISE make sternway from Pier 64 and illustrated her sternway course on Respondent’s Exhibit A-1 by a red line (R. 125, 126). During the course of his observations he was a mile and a quarter away (R. 126) and the weather was clear and sunny (R. 127). This course is well north of the marked cable area (Respondent’s Exhibit A-1).

The record shows that the trial court refused to admit Respondent’s Exhibit A-11 offered for the purpose of showing the practicability and feasibility of the government safeguarding its cable by publishing and issu-

ing navigation charts marking the area and whereabouts of its Seattle-Fort Lawton cable.

A revised chart issued and printed March 17, 1958, marking the Fort Lawton-Seattle cable, was offered in evidence, being Chart 6449 (6446) for the limited purpose of showing the practicability and feasibility of marking the cable area, and the offer was rejected (R. 379). The exhibit was not marked at the time and was later marked as Respondent's Exhibit A-11, being Coast and Geodetic Survey Chart No. 6446 (R. 386).

On the issue of proper proof of damages and error in admission of hearsay evidence of damages over appellant's objection, the record shows the following:

The appellee produced a witness, Charles B. Obrien, chief cost accountant for the Alaska Communication System, U.S. Army, with a rank of Sergeant First Class (R. 149), and a qualified accountant (R. 150), acting as chief cost accountant for Alaska Communication System in the year 1955 (R. 151) and engaged in the project of preparing the costs of the job pertaining to the cable break of the Fort Lawton-Seattle cable in 1955 (R. 151). He produced Respondent's Exhibit No. 3 for identification (R. 152) and identified it as "a job order cost of the cable break, the Seattle-Fort Lawton cable break, referring to it as a ledger sheet prepared by himself in the regular course of business (R. 152).

Libelant's Exhibit No. 3 was refused in evidence and the court over objection permitted and considered hearsay evidence as proof of appellee's damages (R. 161, 162).

The foregoing affords the basis of Specifications of Error which follow.

### **SPECIFICATIONS OF ERROR**

The Specifications of Error relied upon and each error intended to be urged are as follows:

#### **Specification of Error No. 1**

The trial court erred in finding and concluding that the SS PRINCESS LOUISE and those in charge of her were negligent in dropping and dragging her anchor in a marked and known cable area and in causing damage to appellee's submarine cable (Findings of Fact II to XIV, inclusive, Conclusions of Law, R. 13-18).

#### **Specification of Error No. 2**

The trial court erred in finding that the anchor of the SS PRINCESS LOUISE contacted and damaged appellee's submarine cable on March 21, 1955, between the hours of 3:00 and 4:00 p.m., there being a hiatus in proof that the cable was damaged during the maneuvers of the PRINCESS LOUISE between 3:00 and 4:00 p.m. on March 21, 1955 (Oral Decision, R. 381, Findings of Fact VII, XIV, R. 15, 17).

#### **Specification of Error No. 3**

The trial court erred in excluding from evidence a 1958 U.S. C. & G.S. Chart No. 6446, being Respondent's Exhibit A-11 offered for the purpose of showing the feasibility and practicability of the government marking thereon the location of the Seattle-Fort Lawton submarine cable.



**Specification of Error No. 4**

The trial court erred in finding that the appellee proved damages in the sum of \$6,954.23, or in any other sum, and also erred in admitting and considering hearsay evidence on the question of damages (Findings of Fact XII, Conclusions of Law III, and IV, R. 16, 18, Oral Decision R. 282, 161, 162).

The evidence admitted and the grounds urged for its rejection appear as follows:

“Q. (By MR. BROZ): Did you prepare a cost analysis of the Seattle-Fort Lawton cable repair job in 1955?

A. Yes, I did.

Q. And in the course of your preparation of that cost analysis did you find certain facts which were included in your cost analysis?

A. Yes, I did.

Q. What did you find with regard to the cost analysis preparation of this repair job?

MR. MORROW: Objected to on the ground that the question calls for hearsay evidence.

THE COURT: The objection is overruled.

A. I found that the cost of the repair of the Seattle-Fort Lawton submarine cable amounted to \$6,954.23 direct cost, this being compiled from the—

THE COURT: Just a minute. There is nothing before you. Ask him another question.

Q. (By MR. BROZ): How was that figure arrived at, Sergeant?

A. That figure was arrived at from labor records, the ship's records, which I personally went

down and audited on the job, and subsistence that was aboard the ship, in arriving at this figure. These are direct costs only."

## ARGUMENT

### Specification of Error No. 1

The trial court erred in finding and concluding that the SS PRINCESS LOUISE and those in charge of her were negligent in dropping and dragging her anchor in a marked and known cable area and causing damage to appellee's submarine cable (Findings of Fact II to XIV, inclusive, Conclusions of Law, R. 13-18).

The Master of the PRINCESS LOUISE, of course, had information and knowledge of the cable area as marked on the navigation chart, and of a sign between Pier 56 and Pier 57 warning vessels not to drop their anchor. He also had information and knowledge of equal importance of the depth of water and bottom underneath the surface of the water marked on the navigation chart. The Master *did not know and no knowledge is imputed to him* that the Fort Lawton submarine cable veered north from Piers 56 and 57. He had no knowledge that one of the cables, instead of going due west into deeper water, veered north outside the marked area into water having 180 feet depth or less (Respondent's Exhibit A-1).

The depth of water at the westerly end of the northerly boundary of the marked cable area shows a sounding of 197 feet on the navigation chart. On out from the westerly boundary of the cable area, all cables are free from injury by an anchor swinging free at 30 fathoms.

The submarine cables which appear on the navigation chart to go westerly from between Piers 56 and 57, drop off into deeper water as will be noted by the soundings on the chart such as 227, 258, 239, all showing bottom at which a submarine cable would be free from the anchor of a ship let out to 30 fathoms. The Seattle-Fort Lawton cable as authorized drops off to a 97-foot bottom near shore to 197 feet to 239 feet as indicated by the closest soundings, as noted by the navigation chart (Respondent's Exhibit A-1).

The situation was aggravated by the Army in 1953 by moving the Seattle-Fort Lawton cable northward of its authorized position and without notice. The aggravation was compounded by moving the cable toward piers on the northwesterly sea wall of Elliott Bay and to shallow water (Respondent's Exhibit A-1).

The 1953 change took the Seattle-Fort Lawton submarine cable north toward the 160-foot sounding on the chart. It in fact followed a 160- to 180-foot sounding curve. Compare Respondent's Exhibit A-1 showing the 1953 location of the Seattle-Fort Lawton cable with the sounding chart, Respondent's Exhibit A-10. The cable no longer rested on the bottom at 197 feet below the surface, dropping to 239 feet where an anchor let out at 30 fathoms would swing free over the cable on the bottom. It had in fact been placed where ships navigating and maneuvering with the use of their anchors in the vicinity of Piers 64 and 66 would sooner or later foul and likely damage it, not knowing as it were that the cable rested on bottom below their ships at a depth of 160 to 180 feet as the navigating chart shows (Re-

spondent's Exhibit A-1, and as verified by the sounding chart, Respondent's Exhibit A-10). The government had effectively laid the groundwork for damage to its own submarine cable.

The mariners' charts had not as of March, 1955, been revised to show the location of the cable, which would have permitted precautions by a prudent shipmaster to avoid dropping and dragging an anchor in the area.

It would have been practical and feasible to mark the chart showing the cable (Respondent's Exhibit A-11 (rejected)) to safeguard the cable so that the public and others than the Army would have been aware of the presence of the cable occasioned by the 1953 change. Why the Army did not have the Seattle-Fort Lawton submarine cable marked on the U.S. C. & G.S. charts published by the government, is anybody's guess.

The appellant should not be made to pay for damages not of their own doing. The appellee should be mulcted with the costs and expenses of its own misdoing. The lesson learned was the precaution taken subsequently in marking the boundaries of the area showing the presence of the Seattle-Fort Lawton cable (Respondent's Exhibit A-11 (rejected)).

The facts crying out for justice for reversal of the trial court's clearly erroneous findings and decision are supported by the action this court took in a previous instance where the Army moved a cable without notice. The case at bar resembles *The Georgie*, 14 F.(2d) 98 (9 Cir.—1926), where the District Court was reversed and for reasons the court should grant a reversal here. The

facts in that case showed that the United States maintained a submarine and telephone cable between the westerly end of Pier 41 in the Bay of San Francisco and Alcatraz Island, with no sign at the pier and no charts of the bay showing its location. A cable of the Great Western Power Company left the opposite corner of the same pier on which was a sign indicating the location of that cable. *The government cable and the power company's cable were about 200 feet apart. The government cable was 125 feet from the extreme end of the sign maintained by the power company.* The SS GEORGIE during the afternoon approached Pier 41 for the purpose of docking and to make the vessel swing to the tide and wind, the pilot ordered her anchor dropped damaging the government cable. The pilot had no notice or knowledge of the location of the government cable, nor was the location of the cable generally known. The court stated in the course of its opinion:

“... We agree with the court below that the act of the pilot in dropping the anchor was negligent, if as a matter of fact he knew of the location of the cable, or if as a matter of law, notice of such location is to be imputed to him.”

The trial court held that it was the imperative duty of every pilot to fully inform himself of every government cable, and his failure to do so would render his ship liable for any mishap.

In respect to the foregoing holding the court made the following statement appropriate to the case at bar:

“... In the absence of statute, we are not prepared to say that any such onerous duty is imposed by law upon those engaged in the rightful navigation of



the public waters of the state or United States. The public right of navigation in all navigable waters is the dominant one, and, should a private corporation lay a cable in public waters without notice or warning, we apprehend it will not be claimed that such corporation could maintain an action against any vessel that might cause injury to the cable in the lawful exercise of this dominant right. And, while the United States is not responsible for the negligence of its officers or agent, yet if public property is needlessly exposed to peril by such officers or agents, the responsibility for its destruction should not be shifted to those who may happen to injure it in the lawful exercise of a right conferred by law."

The cable in question at Pier 41 at San Francisco had been changed from another location about five months before the accident and without notice.

In deciding the case in *The Georgie*, the Court of Appeals adopted by analogy duties imposed by the California Code on private corporations owning and maintaining cables. The Code precluded recovery for damages to submarine cables "unless such corporation has previously erected, on either bank of the waters under which the cable is placed, a monument indicating the place where the cable lies, and publishes for one month in some newspaper, most likely to give notice to navigators, *a notice giving a description and the purpose of the monuments, and the general course, landings, and termini of the cable*" (emphasis supplied). The Court of Appeals went on to say:

"The government is not bound by the state statute, but that statute prescribed a sound and whole-

some rule of public policy, and it would seem that the government is in duty bound to give some notice or warning of some kind as to the location of these numerous submarine cables over which vessels of every kind are constantly moving.

“The libel is, of course, based on negligence, and the mere dropping of an anchor in public waters in the vicinity of an unknown and unmarked cable does not constitute such negligence.”

The PRINCESS LOUISE was in any event not negligent. The undisputed facts conclusively demonstrate that the PRINCESS LOUISE was never, never within the boundaries of the marked cable area. This is demonstrated by the following points:

1. The appellee's own witness, Burt Langworthy, harbor man by whose testimony appellee should be bound, testified that the PRINCESS LOUISE came on her “normal course into the harbor and in towards the pier” (R. 101). And though she came farther south than usual, made necessary by a southeasterly wind, Langworthy testified that her most southerly position “could have been as far as Pier 59” at the time she made her turn (R. 102). He observed the PRINCESS LOUISE *500 yards* from Pier 57 (59) (R. 107). The witness had been talking about Pier 59 and government counsel injected 57 into a question which leaves in doubt whether the witness had in mind Pier 57 or Pier 59, but he definitely stated Pier 59 (R. 101, 102). If the witness meant Pier 57 instead Pier 59 as to the place the PRINCESS LOUISE made her turn, still the westerly boundary of the cable area is 420 yards from Pier 57 and it is immaterial whether the witness meant Pier 57

or 59 as the 500 yards off either pier would place the PRINCESS LOUISE well outside the marked cable area. Burt Langworthy thus has placed the PRINCESS LOUISE not only outside the marked cable area, but in deep water of 197 or more feet to bottom. By appellee's own witness, one of appellee's most important witnesses, the PRINCESS LOUISE was not within the cable area marked on the chart when she made her first approach to the C.P.R. Dock, Pier 64 (Respondent's Exhibit A-1).

2. Did the PRINCESS LOUISE back into the *marked* cable area following her first approach to the dock? This was impossible under existing weather conditions of a southeast gale 35 to 45 miles per hour, which blew the ship north away from the cable area. This was also illustrated by appellee's witness, Burt Langworthy, who so testified (R. 123), and then drew the course of the PRINCESS LOUISE as she backed down from her attempted landing at the C.P.R. Dock. While backing, her course was also to leeward. The southeasterly gale hitting her broadside blew her to the north. The combined forces of engines astern and of wind blowing the vessel north took the PRINCESS LOUISE on a north-west course as she backed away from the C.P.R. Dock. Burt Langworthy drew such a course on Respondent's Exhibit A-1 (R. 124, 125). The course of the PRINCESS LOUISE backing down from her first attempted landing was just exactly in the opposite direction from the marked cable area on the chart (Respondent's Exhibit A-1). What could be more conclusive than the cross-examination of appellee's own witness on the issue as to whether or not the PRINCESS LOUISE backed into the



cable area so marked on N.S. C. & G.S. Chart 6449 (Respondent's Exhibit A-1) ?

3. There is, of course, no evidence or contention that the PRINCESS LOUISE maneuvered within the *marked* cable area on her second approach to the C.P.R. Dock assisted by the tug TITAN. There is no contention that the use of a tug on this occasion was negligent, nor is there any evidence or contention that the use of one or two anchors to assist a ship in docking is negligent. If the anchor of the PRINCESS LOUISE dragged the cable on her second approach, it would have been moved to the north. Instead it was moved to the south 75 yards from its 1953 plotted position (Respondent's Exhibit A-1, R. 302).

4. The physical damage to the cable supports the contention of the PRINCESS LOUISE. The length of the cable picked up from the sea wall at the foot of University Street between Piers 56 and 57 and measured to the position of the break, measured 3,450 feet (R. 298). Damage identified by the Master of the cable ship as having been caused by a grapnel or anchor measured 500 feet from the broken end, or in other words, back only 133 yards from the position of the break (R. 241, 242). The direct distance from the sea wall to the position of the break is 1,100 yards, or 3,300 feet (R. 302). The position of the break as measured to the closest marked cable area is 450 yards, according to the Master of the cable ship (R. 293). (This actually measures 500 yards — see Respondent's Exhibit A-1). The place where an anchor hooked the cable is at least 1,000 feet outside, beyond and away from the marked cable area.

The inescapable conclusion from the foregoing is that, if the anchor of the PRINCESS LOUISE, or any other vessel, contacted the cable, the contact was made well outside the marked cable area, according to appellee's own evidence.

5. The facts are contrary to appellee's own theory as to how the anchor of the PRINCESS LOUISE damaged the cable.

Appellee's apparent theory was that the anchor of the PRINCESS LOUISE dragged the Seattle-Fort Lawton submarine cable *northward* from a position within the marked cable area to the position of the break and beyond the cable area marked on the chart (R. 244, 245). Quite true, the position of the break is north of the cable as shown in the War Department Permit (Respondent's Exhibit A-1). When called and examined as a witness by appellant (R. 284), the Master of the cable ship testified:

"A. The position at which the Seattle end was picked up is *south* of the position the cable was replaced in 1953 a distance of approximately 75 yards.

Q. Could that cable have been disturbed in a southerly position in your opinion by a ship backing with his anchor out?

A. If the anchor were dragging on the bottom, yes." (R. 302)

Not only did the cross-examination of the Master of the cable ship establish the submarine cable had moved south by disturbance such as an anchor, rather than north as previously testified, but it was shown also that

the distance of the movement was 75 yards before the break occurred. Moreover, if the cable was disturbed by the anchor of the PRINCESS LOUISE it was while the PRINCESS LOUISE was backing.

6. The testimony of William M. Martin, Supervising Photographer, is quite conclusive. He testified to the cable areas and distances and to depths of water in the vicinity of the cable area in question (R. 128, 129). He stated that at 4:00 o'clock p.m. on March 21, 1955, the stage of the tide was 9.3 feet, and at 3:00 p.m. the same day it was 8.7 feet (R. 141). He said to get the depth of water at any stage of the tide you had to add the sounding marked on the chart, which is in feet, to the stage of the tide. For example, if you had a sounding of 180 feet at 4:00 p.m. on March 21, 1955, the depth of the water, surface to bottom, would be 189.3 feet (R. 141).

The anchor chain of the PRINCESS LOUISE was lowered 30 fathoms, or 180 feet (R. 325). To get the depth of the anchor in the water it is necessary to add the length of the shank of the anchor which is 8 feet long (R. 355); therefore, with 30 fathoms of chain out and the shank of the anchor 8 feet long, the anchor of the PRINCESS LOUISE would touch bottom during maneuvers at 188 feet below the surface of the water. Thus, without going into fractions, by adding the height of water of 8.7 feet and 9.3 feet in the flood tide to obtain the depth of the water, it appears the anchor shank of the PRINCESS LOUISE of 8 feet offsets the increased depth of the water by reason of the flood tide. That is to say the anchor would swing free during maneuvers where

the soundings on the chart show water at soundings of 180 feet. Only at soundings of 180 feet or less would the anchor touch bottom so as to hook a submarine cable.

The soundings on the chart within the marked cable area show depths of water 100 yards off Pier 57 of 94 feet, and 420 yards off Piers 57 and 58 of 197 feet (Respondent's Exhibit A-1). It appears that 400 yards offshore from seawall there is a 180-foot sounding which is 200 yards off Pier 57. For the PRINCESS LOUISE's anchor to have fouled the submarine cable of appellee within the marked cable area, she would have had to have been within 200 yards of Pier 57 or 58. Appellee *claims* that the PRINCESS LOUISE backed into this area. But it is established by the appellee that the PRINCESS LOUISE went astern from her own dock and she backed toward West Seattle, or southwest, which is away from the marked cable area. This is by Col. Rogers' own testimony (R. 51). Appellee's other witness, Capt. Langworthy, was of course more accurate and confirmed Capt. Campbell. He has stated and demonstrated that the PRINCESS LOUISE, when she went astern, took a course northwest due to the wind blowing her north (Respondent's Exhibit A-1). She could not have picked up the cable with her anchor 600 feet off Pier 57 where Col. Rogers said he saw her because, first, she was never there, and second, there is no evidence of damage to the cable within 400 yards from the seawall, where 200 yards off Pier 57 would place her. Physical evidence of an anchor having damaged a cable appeared 500 feet from the broken end. The position of the break was 3,300 feet from the seawall at Pier 57. This would place a ship whose anchor struck the cable 933 yards from

the seawall as against 400 yards by estimate of Rogers. The only explanation is, of course, that the submarine cable veered north outside and beyond the marked cable area in water of less than 180 feet depth as shown by the charts where it caught the unsuspecting anchor of the PRINCESS LOUISE or some other innocent ship.

If the PRINCESS LOUISE or some other vessel dragged the Army cable by her anchor, the anchor picked the cable up north of and well outside the cable area marked on the chart, and in 30 fathoms or less of water where it was likely to catch the anchor of a ship navigating in the area, a ship innocent of the unauthorized and unpublished change in location.

### **Specification of Error No. 2**

The trial court erred in finding that the anchor of the SS PRINCESS LOUISE contacted and damaged appellee's submarine cable on March 21, 1955, between the hours of 3:00 and 4:00 p.m., there being a hiatus in proof that the cable was damaged during the maneuvers of the PRINCESS LOUISE between 3:00 and 4:00 p.m. on March 21, 1955 (Oral Decision R. 381, Findings of Fact VII, XIV, R. 15, 17).

The question presented is, was there any evidence that appellee's cable sustained physical damage by a ship's anchor during the aforesaid period of time, or any evidence from which there could be a reasonable inference that the cable was damaged during that period of time? It is believed that a necessary link in the chain of proof is lacking here. Appellee proved the cable sustained physical damage and was likely caused



by a ship's anchor, but did not prove that the damage was caused by the PRINCESS LOUISE. In order to show that the cable was damaged by the anchor of the PRINCESS LOUISE it would seem necessary for appellee to prove that actual physical damage occurred between the hour of 3:00 and 4:00 p.m. on March 21, 1955. The admitted facts admit "that the submarine cable . . . was parted during the week of March 20, 1955" (R. 9). The submarine cable could have been damage any time during that week under the admitted facts. There is no elimination of the possibilities that another vessel's anchor caused the damage before 3:00 p.m. on March 21, 1955. Nor has the possibility been eliminated that the damage was caused after 4:00 p.m., or some other day of the week. The PRINCESS LOUISE simply has not been identified as the ship causing the damage, but only as a ship who had her anchor out in the vicinity of the C.P.R. Dock on March 21, 1955, between 3:00 and 4:00 p.m.

The appellee produced no witnesses or records from Seattle or Fort Lawton which it undoubtedly could have done to show exactly when the submarine cable sustained physical damage. Nor was any witness or record produced from Adak or other A.C.S. stations other than Kodiak to show interruption of service between Fort Lawton and Seattle. The communications officer from Kodiak merely concluded that the phone between Seattle and Fort Lawton was out of order from 4:05 o'clock p.m. to 4:20 o'clock p.m. on March 21, 1955, from a record stating "line trouble." The logical inference from the A.C.S. records is that the line being

out only fifteen minutes sustained no physical damage of such a serious and lasting nature, as the line was out only during a fifteen-minute period. Of course, the further inference is that there was no damage at all between 3:00 o'clock and 4:00 p.m. on March 21, 1955, because the service at that time was being worked by Adak. Appellee obviously failed to identify the PRINCESS LOUISE as the vessel whose anchor caused the damage.

### **Specification of Error No. 3**

The trial court erred in excluding from evidence a 1958 U.S. C. & G.S. Chart No. 6446, being Respondent's Exhibit A-11 offered for the purpose of showing the feasibility and practicability of the government marking thereon the location of the Seattle-Fort Lawton submarine cable.

A navigation chart, U.S. C. & G.S. 6449 (6446) showing a cable area marked in the vicinity of the Canadian Pacific Dock was offered in evidence for the very limited purpose of showing the practicability and feasibility of marking the cable area (R. 379, Respondent's Exhibit A-11). The markings on the chart show that the Seattle-Fort Lawton submarine cable could have been safeguarded from injury by marking the area on the chart which would have conveyed notice to the mariners and masters such as the master of the PRINCESS LOUISE, the location and existence of the submarine cable.

The government had a duty to give notice of the location of the Seattle-Fort Lawton submarine cable.

*The Georgie*, 14 F.(2d) 98 (9 Cir.—1926). The duty the government could and should have performed was the publishing and issuing of navigation charts marking the boundaries of the Seattle-Fort Lawton cable. The exhibit was admissible for the purpose of showing the feasibility and practicability of the government safeguarding its own cable against injury by vessels dropping anchors in a heavily navigated area off the Bell Street Terminal and the Canadian Pacific Dock. The government by publishing and issuing a chart showing the cable could have safeguarded itself against damage and injury to the cable.

In *Carstens Packing Co. v. Swinney*, 186 Fed. 50 (9 Cir.—1911), this court in dealing with the admissibility of evidence subsequent to the time of injury, showing the practicability and feasibility of safeguarding against injury, held that such evidence was admissible. In a case where the defendant covered vats subsequent to the injury of the plaintiff, the court stated:

“In the present case evidence that the defendant covered the vats subsequent to the injury to plaintiff tended to show that the vats could be reasonably safeguarded by being covered and that they could be so protected with due regard to the ordinary uses of such vats. The evidence tended to point out the duty of the defendant with respect to these vats. If a subsequent act is admissible to point out the party who is charged with a duty, where that question is an issue of fact, it seems to us that it is equally admissible to point out the specific duty with which the party is charged when that question is an issue of fact and the evidence is limited to that issue.”



The court clearly erred in excluding chart U.S. C. & G.S. 6446, Respondent's Exhibit A-11, which shows the government could have prevented the damage to its own cable by publishing and issuing a navigation chart showing the location of its submarine cable.

#### **Specification of Error No. 4**

The trial court erred in finding that the appellee proved damages in the sum of \$6,954.23, or in any other sum, and also erred in admitting and considering hearsay evidence on the question of damages (Findings of Fact XII, Conclusions of Law III, and IV, R. 16, 18, Oral Decision R. 282, 161, 162).

The evidence admitted and the grounds urged for its rejection appear as follows:

“Q. (By MR. BROZ): Did you prepare a cost analysis of the Seattle-Fort Lawton cable repair job in 1955?

A. Yes, I did.

Q. And in the course of your preparation of that cost analysis did you find certain facts which were included in your cost analysis?

A. Yes, I did.

Q. What did you find with regard to the cost analysis preparation of this repair job?

MR. MORROW: Objected to on the ground that the question calls for hearsay evidence.

THE COURT: The objection is overruled.

A. I found that the cost of the repair of the Seattle-Fort Lawton submarine cable amounted to \$6,954.23 direct cost, this being compiled from the—

THE COURT: Just a minute. There is nothing before you. Ask him another question.

Q. (By MR. BROZ): How was that figure arrived at, Sergeant?

A. That figure was arrived at from labor records, the ship's records, which I personally went down and audited on the job, and subsistence that was aboard the ship, in arriving at this figure. These are direct costs only." (R. 161, 162)

The only evidence on damages based upon costs was produced by the chief cost accountant for the Alaska Communication System, who in the spring of 1951 prepared a cost analysis of the cable repair job (R. 149, 151) which cost analysis was identified as a job order ledger sheet, being libellant's Exhibit No. 3, R. 152) and *which ledger sheet was offered* in evidence (R. 153, 163), admitted (R. 163) and *finally rejected* in evidence (R. 184, 185). The court having considered only oral testimony of a hearsay nature as proving damages, appellee failed in its proof of damages. The court, of course, should have sustained appellant's objection to the hearsay evidence on damages and it was error not to do so.

Where there is no previous evidence of items of damage, a general sweeping statement as to the amount of damages is not permissible. 25 C.J.S. Damages, §157, p. 805.

The appellee failed to prove by competent evidence cost of repairs and their reasonableness. The witness obviously had no personal knowledge but had gained the information from a ledger sheet which he had pre-

pared and the evidence he gave in respect to damages was purely hearsay. The hearsay evidence at most only amounted to a conclusion of the witness.

### CONCLUSION

It is respectfully submitted that the lower court committed reversible error — as herein stated; that the decree herein should be reversed and the case remanded with instruction to enter a decree in favor of appellant dismissing the libel.

Respectfully submitted,

BOGLE, BOGLE & GATES

THOMAS L. MORROW

*Proctors for Appellant  
Canadian Pacific Railway Co.*

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## APPENDIX LISTING EXHIBITS

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### Plant's Exhibits

	<i>Identified</i>	<i>Offered</i>	<i>Admitted</i>	<i>Rejected</i>
A.C.S. Station Log	R. 66	R. 68, 73	R. 73	
Tidal Record	R. 138	R. 139	R. 139	
Job Order Cost Sheet	R. 152	R. 153 163, 216	R. 163	R. 184, 185, 216
Charter Party	R. 204			R. 207
War Dept. Permit	R. 205	R. 205	R. 205	

### Pondent's Exhibits

U.S.C.&G. Chart 6449	R. 124	R. 124	R. 124	
Martin's Chart	R. 147	R. 147 (Withdrawn R. 375)		R. 149
Log Basil Lenoir	R. 194	R. 194	R. 195	
Deck Cable Report 1955	R. 250	R. 250	R. 250	
Deck Cable Report 1953	R. 250, 251	R. 252	R. 252	
Pilot House Log 1953	R. 252	R. 252	R. 252	
Pilot House Log Princess Louise	R. 270	R. 271	R. 271	
Engine Room Log Princess Louise	R. 271	R. 271	R. 271	
Port of Seattle Map Harbor Map	R. 272	R. 272	R. 275	
0 Sounding Chart	R. 276	R. 276	R. 279	
1 U.S.C.&G. No. 6446	R. 379	R. 386		R. 386



